

1-1 By: Bailey, et al. (Senate Sponsor - Gallegos) H.B. No. 2703
1-2 (In the Senate - Received from the House May 2, 2003;
1-3 May 7, 2003, read first time and referred to Committee on Criminal
1-4 Justice; May 22, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0, 1
1-6 present not voting; May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2703 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the testing of certain physical evidence, crime
1-11 laboratory accreditation, and the admissibility of evidence
1-12 examined or tested by a crime laboratory.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Article 38.35, Code of Criminal
1-15 Procedure, is amended to read as follows:

1-16 Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

1-17 SECTION 2. Article 38.35(a)(1), Code of Criminal Procedure,
1-18 is amended to read as follows:

1-19 (1) "Forensic analysis" means a medical, chemical,
1-20 toxicologic, ballistic, or other expert examination or ~~and~~ test
1-21 performed on physical evidence, including DNA evidence, for the
1-22 purpose of determining the ~~its~~ connection of the evidence to a
1-23 criminal action. The term does not include:

1-24 (A) latent print examination;

1-25 (B) a test of a specimen of breath under Chapter
1-26 724, Transportation Code; or

1-27 (C) an examination or test excluded by rule under
1-28 Section 411.0205(c), Government Code.

1-29 SECTION 3. Article 38.35, Code of Criminal Procedure, is
1-30 amended by adding Subsections (d) and (e) to read as follows:

1-31 (d) Physical evidence subjected to a forensic analysis, and
1-32 testimony regarding the evidence, under this article is not
1-33 admissible in a criminal case if, at the time of the analysis or the
1-34 time the evidence is submitted to the court, the crime laboratory or
1-35 other entity conducting the analysis was not accredited by the
1-36 Department of Public Safety under Section 411.0205, Government
1-37 Code.

1-38 (e) Notwithstanding Subsection (d), physical evidence
1-39 subjected to a forensic analysis under this article is not
1-40 inadmissible in a criminal case based solely on the accreditation
1-41 status of the crime laboratory or other entity conducting the
1-42 analysis if the laboratory or entity:

1-43 (1) has preserved one or more separate samples of the
1-44 physical evidence for use by the defense attorney or use under order
1-45 of the convicting court; and

1-46 (2) has agreed to preserve those samples until all
1-47 appeals in the case are final. This subsection expires September 1,
1-48 2005.

1-49 SECTION 4. Subchapter A, Chapter 411, Government Code, is
1-50 amended by adding Sections 411.0205, and 411.0206, to read as
1-51 follows:

1-52 Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS.

1-53 (a) In this section, "forensic analysis" and "physical evidence"
1-54 have the meanings assigned by Article 38.35, Code of Criminal
1-55 Procedure, and "DNA laboratory" has the meaning assigned by Section
1-56 411.141.

1-57 (b) The director by rule shall establish an accreditation
1-58 process for crime laboratories, including DNA laboratories, and
1-59 other entities conducting forensic analyses of physical evidence
1-60 for use in criminal proceedings.

1-61 (c) The director by rule may exempt from the accreditation
1-62 process established under Subsection (b) a crime laboratory or
1-63 other entity conducting a forensic analysis of physical evidence

for use in criminal proceedings if the director determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or entity or the type of examination or test performed by the laboratory or entity;

(2) the type of examination or test performed by the laboratory or entity is admissible under a well-established rule of evidence or a statute other than Article 38.35, Code of Criminal Procedure; and

(3) the type of examination or test performed by the laboratory or entity is routinely conducted outside of a crime laboratory or other applicable entity by a person other than an employee of the crime laboratory or other applicable entity.

Sec. 411.0206. REGULATION OF DNA TESTING. The director shall by rule regulate DNA testing, including regulation of DNA laboratories.

SECTION 5. The public safety director of the Department of Public Safety of the State of Texas shall adopt rules under Section 411.0205, Government Code, as added by this Act, not later than the 61st day after the effective day of this Act.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution, and applies to evidence tested after September 1, 2003. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003, and applies to evidence tested after that date.

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